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CIVIL DIVISION  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
AT ATLANTA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE: TRI-STATE CREMATORIAL  
LITIGATION ) MDL DOCKET NO. 1467  
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**FUNERAL HOME DEFENDANTS' MOTION FOR VOLUNTARY  
DISMISSAL WITHOUT PREJUDICE OF  
CROSS-CLAIM AGAINST MARSH DEFENDANTS**

The Funeral Home Defendants, collectively and individually<sup>1</sup>, pursuant to Fed. R. Civ. P. 41 (c), respectfully request and move this Honorable Court to dismiss

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<sup>1</sup> Erwin Pettit Funeral Home, Inc., Bob Foster D/b/a Foster & Son Funeral Home, Cumberland Funeral Home, Inc., d/b/a Cumberland Funeral Home, Dean Lay Funeral Home, Gilmore Funeral Home, LLC, Hardwick & Sons Funeral Home, Inc., J. Avery Bryan Funeral Home, Inc., R. D. Moore Funeral Home, Inc., Ryan Funeral Home, Inc., SCI Georgia Funeral Services, Inc., d/b/a J.D. Hill Funeral Home, SCI Georgia Funeral Services, Inc., d/b/a Jennings Funeral Home, SCI Georgia Funeral Services, Inc., d/b/a Jennings Heritage Chapel Funeral Home, SCI Georgia Funeral Services, Inc., d/b/a Parnick Jennings Funeral Home, SCI Georgia Funeral Services, Inc., f/d/b/a Erwin Pettit Funeral Home, SCI Georgia Funeral Services, Inc., f/d/b/a J. Avery Bryan of Chickamauga, SCI Georgia Funeral Services, Inc., f/d/b/a Kenemer Brothers Funeral Home, SCI Georgia Funeral Services, Inc., f/d/b/a Wallis Stewart Funeral Home, SCI Tennessee Funeral Services, Inc. d/b/a Chattanooga Funeral Home-East Chapel, SCI Tennessee Funeral Services, Inc. d/b/a Chattanooga Funeral Home-North Chapel, SCI Tennessee Funeral Services, Inc. d/b/a Chattanooga Funeral Home-Valley View Chapel, SCI Tennessee Funeral Services, Inc. d/b/a Chattanooga Funeral Home-West Chapel, SCI Tennessee Funeral Services, Inc., d/b/a Fike Funeral Home, Wallis Stewart Funeral Home, Sequatchie Valley Memorial Funeral Home & Gardens, Inc., Taylor Funeral Home of Chattanooga, Inc., Thomas and Son Funeral Home, Inc., Turner Funeral Home, Inc., Wallis-Wilbanks Funeral Home, LLC, Wann Funeral Home, Inc., and W.L. Wilson & Sons Funeral Home, Inc.

without prejudice their respective cross-claims against against Tri-State Crematory, Inc., T. Ray Brent Marsh, Clara C. Marsh, Rhames L. Marsh and Clara C. Marsh, the Administratrix of the Estate of Tommy Ray Marsh, deceased, and Tri-State Crematory, a sole proprietorship or as a trade name (hereinafter referred to as the "Marsh Defendants").

The Funeral Home Defendants, collectively and individually, show that, in the Funeral Home Defendants' Answer to Plaintiffs' Master Complaint – Second Amended Class Action Complaint, and Cross-claim Against Tri-state Crematory, Inc. and the Marsh Defendants, the Funeral Home Defendants set forth their individual and collective claims against the Marsh Defendants, jointly and severally. According to the cross-claims, the Marsh Defendants are solely responsible for any and all judgments, monies, fees and other costs that may be rendered against any and all Funeral Home Defendants in favor of Plaintiffs. These cross claims also seek recovery of the costs, fees, expenses and attorneys fees that the Funeral Home Defendants, individually and collectively, incurred as a result of defending the case.

At this time, the Funeral Homes Defendants wish to dismiss without prejudice the cross-claims described herein against the Marsh Defendants. The Funeral Home Defendants reserve the right to pursue any indemnity and/or contributions claims

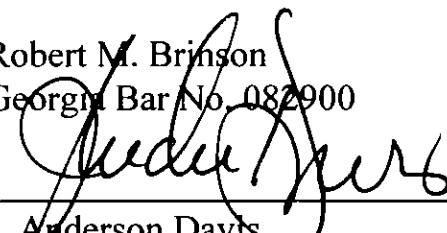
against the Marsh Defendants, if necessary, after the completion of this trial. The Funeral Home Defendants also reserve the right to pursue the costs, fees, expenses and attorneys fees that the Funeral Home Defendants, individually and collectively, incurred as a result of defending the case.

WHEREFORE, the Funeral Home Defendants respectfully request and move that the Court approve the dismissal without prejudice of the Funeral Home Defendants' cross claims against the Marsh Defendants.

Respectfully submitted this 24th day of February, 2004.

**BRINSON, ASKEW, BERRY, SEIGLER,  
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115185.1

**CERTIFICATE OF SERVICE**

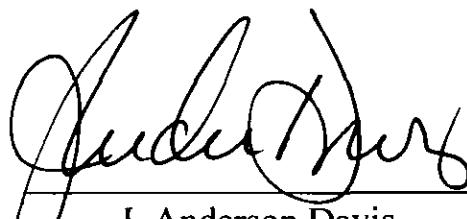
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants' Motion to Dismiss Without Prejudice the Cross Claims against the Marsh Defendants** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

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This 24th day of February, 2004.



J. Anderson Davis  
Georgia Bar No. 211077